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27

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW, a public trust and institution of higher education duly organized under the laws and the Constitution of the State of California; FALLON VICTORIA, an individual; RENE DENIS, an individual; TENDERLOIN MERCHANTS AND PROPERTY ASSOCIATION, a business association; RANDY HUGHES, an individual; and KRISTEN VILLALOBOS, an individual.

Plaintiffs,

V.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal entity,
Defendant

Defendant.

Case No. 4:20-cv-03033-JST

PLAINTIFFS' RESPONSE TO MOTIN TO INTERVENE

Date: July 22, 2020

Time: 2:00 p.m.

Place: Courtroom 6, 2nd Floor

**ASSIGNED FOR ALL PURPOSES
TO THE HONORABLE JON S.
TIGAR**

Trial Date: (None set yet)

18 Plaintiffs do not support or oppose the Applicants' Motion for Intervention.

19 Plaintiffs note that under Federal Rule of Civil Procedure 24(a)(2), for the
20 Motion to be granted: (1) the motion must be timely; (2) the applicant's must have a
21 "significant protectable" interest relating to the property or transaction which is the
22 subject of the action; (3) the applicant must be so situated that the disposition of the
23 action may as a practical matter impair or impede its ability to protect that interest;
24 and (4) the applicant's interest must be inadequately represented. *Retiree Support*
25 *Group*, 315 F.R.D. 318, 321 (N.D. Cal. 2016) (citing *Freedom From Religion Found. v.*
26 *Geithner*, 644 F.3d 836, 841 (9th Cir. 2011)).

27 Applicants must satisfy all four criteria: “[f]ailure to satisfy any one of the
28 requirements is fatal to the application.” *Retiree Support Group*, 315 F.R.D. at 321

1 (citing *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950) (9th Cir. 2009)).

2 A party who is not entitled to intervention as a matter of right may
 3 nonetheless intervene through permissive intervention pursuant to
 4 Fed. R. Civ. P. 24(b). Permissive intervention requires: (1) an independent ground
 5 for jurisdiction; (2) a timely motion; and (3) a common question of law or fact between
 6 the applicant's claim or defense and the main action. *Freedom*, 644 F.3d at 843.

7 By not supporting or opposing intervention, Plaintiffs do not waive any
 8 objections, including, but not limited to: standing, ripeness, presence of a case or
 9 controversy, justiciability, or political question — nor do plaintiffs waive objection or
 10 reply to Applicants' statements of fact or law.

11 Plaintiffs agree with the City that, “[t]he terms of the Stipulated Injunction
 12 represent a massive commitment of resources by the City, and reflect Plaintiffs' and
 13 the City's shared goal to improve living conditions in the Tenderloin for housed and
 14 unhoused residents alike.” CCSF Response to Mot. for Intervention at 1. Plaintiffs
 15 also agree “the Proposed Intervenors have not demonstrated any reason why the
 16 Stipulated Injunction should not be entered by the Court. Proposed Intervenors have
 17 not identified any provision of the Stipulated Injunction that is unlawful or that
 18 would violate the rights of unhoused persons.” *Id.* at page 2. Finally, Plaintiffs join
 19 the City's request that the Court enter the Stipulated Injunction, regardless of how it
 20 rules on the Motion to Intervene.

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 22 Respectfully submitted,

23
 24 By: _____ /S/ MICHAEL A. KELLY

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 26 RICHARD H. SCHOENBERGER
 27 MATTHEW D. DAVIS
 28 JADE SMITH-WILLIAMS
 Attorneys for ALL PLAINTIFFS